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August 25, 2005

To: Supervisor Gloria Molina, Chair  
Supervisor Yvonne B. Burke  
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Supervisor Don Knabe  
Supervisor Michael D. Antonovich  
From:   
David E. Janssen  
Chief Administrative Officer

**MOTION TO SUPPORT SCA 15 (MCCLINTOCK) – LIMITING THE USE OF EMINENT DOMAIN TO A STATED PUBLIC PURPOSE (ITEM NO. 7 ON THE AGENDA FOR AUGUST 30, 2005) –ADDENDUM**

Item No. 7 was continued from the Board meeting of August 16, 2005. It is a motion by Supervisor Antonovich to support SCA 15 (McClintock), a constitutional amendment which would preclude the use of eminent domain to acquire private property for private uses such as economic development, and to direct the Chief Administrative Office and the Executive Office to draft a five-signature letter in support of SCA 15 to Governor Schwarzenegger and the Los Angeles County delegation. This memorandum is an addendum to our report dated August 15, 2005.

In the interim, the Senate Local Government Committee held an informational hearing on August 17, 2005 to examine how the Supreme Court ruling on eminent domain in Kelo affects California's local governments. The committee heard testimony from five attorneys, one from the Attorney General's office, and two each representing property rights and public agencies. A committee report is expected to be issued soon.

Two bills, **SB 53 (Kehoe)** and **AB 1162 (Mullin and Salinas)** have been amended to deal with the subject of eminent domain. In addition, **SCA 12 (Torlakson and Kehoe)** and **ACA 15 (Mullin and Nation)** - two proposed constitutional amendments - have been amended on the same subject.

**SB 53**, as amended on August 15, 2005, requires redevelopment plans adopted on or after January 1, 2006 to describe the agency's program to acquire real property by eminent domain, and allows agencies to prohibit the use of eminent domain for certain uses such as owner-occupied residences and specified locations within a project area. The plan must contain a time limit, not to exceed 10 years from the plan's adoption within which to begin eminent domain proceedings. Current law allows 12 years. Amendments to an agency plan involving eminent domain are subject to existing law regarding amendments of redevelopment plans including public hearings. For redevelopment plans adopted before July 1, 2006, an agency must adopt an ordinance before July 1, 2006 containing the same information required of plans adopted after January 1, 2006, except that eminent domain proceedings must commence before July 1, 2009.

According to the Community Development Commission (CDC), the requirement for an agency to describe the scope of its eminent domain power is vague and does not differ from current law and practice. The time limits probably would not affect the CDC's ongoing efforts in West Altadena or the proposed Whiteside redevelopment plan.

SB 53 is in the Assembly Committee on Local Government and no hearing date has been set. There is no registered support or opposition.

**AB 1162**, as amended on August 18, 2005, would prohibit the use of eminent domain to acquire owner-occupied residential property for private use until January 1, 2008. Private use is defined as any use other than as a public facility that is owned and operated by the public facility. The bill also requires the California Research Bureau of the State Library to report to the Legislature before January 1, 2007 on all uses of eminent domain by public entities to acquire owner-occupied property for private use.

CDC indicates that the moratorium required by this bill would adversely affect its planned activities in West Altadena and in the proposed Whiteside redevelopment project area. In West Altadena, specifically, AB 1162 could potentially end the proposed future phases of the redevelopment of Lincoln Avenue. In addition, this bill does not allow an exception for dilapidated or dangerous structures, and those located in heavy industrial areas. In CDC's view, AB 1162 and SB 53 in combination could sharply narrow the time within which owner-occupied residences might be acquired.

AB 1162 was referred to the Senate Rules Committee on August 22, 2005. There is no registered support or opposition.

**SCA 12**, as amended on August 15, 2005, is a proposed Constitutional amendment which is designated "the California Homeowners' Protection Act." It stipulates that eminent domain is restricted to public use and that the phrase "public use" does not include the taking of owner-occupied residential property for private use. CDC states

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that SCA 12 would also affect its ongoing redevelopment efforts because it is often necessary to acquire residential properties to assemble land for larger projects. The proposed constitutional amendment makes no exception for blighted properties.

SCA 12 was referred to the Senate Rules Committee on August 15, 2005. There is no registered support or opposition.

**ACA 15**, as amended on August 23, 2005, would prohibit a redevelopment agency from using eminent domain to acquire property without first making "a written finding that the property contains conditions of both physical and economic blight." According to County Counsel, the courts would look to blight standards in existing law and the finding would have to be made near the time of a proposed acquisition.

Because CDC only establishes redevelopment projects in blighted areas, ACA 15 would have a more limited effect than the proposed blanket prohibition under SCA 15. However, CDC is concerned that the blight-finding requirement may invite litigation. In addition, when acquiring land for larger projects, there may be circumstances where individual properties are not blighted, and this would force a reconsideration or cancellation of the project.

ACA 15 was referred to the Senate Committee on Government Organization on August 23, 2005. There is no registered support or opposition.

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MAL:ib

c: Executive Officer, Board of Supervisors  
County Counsel  
Community Development Commission